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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/942,879	08/31/2001	Takahiro Nishiyama	P67087US0	9482

136 7590 01/23/2004
JACOBSON HOLMAN PLLC
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WASHINGTON, DC 20004

EXAMINER

RHEE, JANE J

ART UNIT	PAPER NUMBER
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1772

DATE MAILED: 01/23/2004


Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/942,879

Applicant(s)

NISHIYAMA, TAKAHIRO 

Examiner

Jane J Rhee

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 18 December 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. **ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).**

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 1-16 and 18-20.

Claim(s) withdrawn from consideration: _____.

8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☒ Other: see attachment

ADVISORY ACTION

Response to Arguments

1. Applicant's arguments filed 12/18/04 have been fully considered but they are not persuasive.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, Spurgat discloses a fuel hose with an inner layer of rubber and an outer layer of barrier material (col. 3 lines 64-col. 4 lines 1-9) and Chodha et al. teaches EPDM rubber composition for fabricating hoses (col. 1 line 30) for the purpose of yielding improved mechanical properties (col. 2 lines 61-63). Therefore, it would have been obvious to one having ordinary skill in the art at the time applicant's invention was made to provide Spurgat with a peroxidized cured EPDM in order to yield improved mechanical properties (col. 2 lines 61-63).

In response to applicant's argument that Chodha cannot suggest the exclusion of metal oxide, Chodha et al. teaches in col. 3 lines 7-16, a tack neutral additive which means an additive that has no inhibiting effect upon the surface tack of crosslinked EPDM rubber products produced by vulcanizing the composition of this invention in the

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presence of oxygen, such additives include reinforcing fillers such as carbon black, talc, clay calcium carbonate and silica, process oils, processing aids useful in improving the dispersibility of the fillers during mastication, activators such as metal oxides, accelerators, pigments, foaming agents, forming aids, dessicants, and the like, the types and amounts of these tack neutral additives and the peroxide used as crosslinking agent can be selected and determined in accordance with the specific properties desired in the final EPDM rubber product. Chodha et al. teaches activators such as metal oxides, accelerators, pigments, foaming agents, forming aids, dessicants and the like therefore since Chodha et al. lists a variety of activators, metal oxides is only one of many to choose from, hence even though Chodha et al. does not specifically state that there is an exclusion of metal oxide, Chodha et al. does not specifically state an inclusion of metal oxide. Also, Chodha et al. teaches that the types and amounts of these tack neutral additives and the peroxide used as crosslinking agent can be selected and determined in accordance with the specific properties desired in the final EPDM rubber product.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jane J Rhee whose telephone number is 571-272-1499. The examiner can normally be reached on M-F.

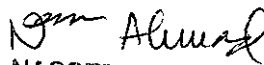
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nasser Ahmad can be reached on 571-272-1487. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9306 for regular communications and 703-872-9311 for After Final communications.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



Jane Rhee
January 12, 2004



NASSER AHMAD
PRIMARY EXAMINER